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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

WILLIAM BURKE,

Plaintiff,

v.

JAMES ALEX FIELDS JR.,
VANGUARD AMERICA, ANDREW
ANGLIN, GREGORY ANGLIN,
DAILY STORMER, MOONBASE
HOLDINGS, LLC, MORNING STAR
MINISTRIES USA, INC., ANGLIN &
ANGLIN, LLC, ROBERT RAY,
MATTHEW HEIMBACH, THE
TRADITIONALIST WORKER PARTY,
JASON KESSLER, PROUD BOYS,
RICHARD SPENCER, NATIONAL
POLICY INSTITUTE, DAVID DUKE,
NATIONALIST FRONT, AUGUSTUS
SOL INVICTUS, HONORABLE
SACRED KNIGHTS, JOHN DOE 1-
1000 AND JANE DOE 1-1000,

Defendants.

Case No. 2:19 cv 2006

RESPONSE TO SHOW CAUSE ORDER

Judge: Hon. Michael H. Watson

Magistrate Elizabeth A. Preston Deavers

PLAINTIFF'S RESPONSE TO SHOW CAUSE ORDER

Now comes Plaintiff and for his *RESPONSE TO SHOW CAUSE ORDER*,
states as follows:

1. Plaintiff is diligently working to serve the remaining unserved defendants and seeks an additional 90 days to do so.

2. Some of the causes of action have a two year statute of limitations (negligence and 42 USC § 1985) and, therefore, Plaintiff would be unduly prejudiced by a dismissal order.
3. Plaintiff's counsel is a solo practitioner and experienced a personal matter after the filing of the Complaint that took a substantial amount of Plaintiff's counsel's time after the filing of this suit and limited the time he could devote to locating the Defendants.
4. Plaintiff's counsel is confident that if Plaintiff is granted an additional 90 days, additional Defendants will be served.
5. The prejudice to defendants, all of whom, upon information and belief, are currently defendants in other suits related to their involvement with the Unite the Right Rally, would be minimal if any.
6. There will be substantial prejudice to the Plaintiff if the unserved defendants are dismissed from the suit, even though it would be without prejudice, since many of the claims against those Defendants might be time-barred upon refiling.
7. Proud Boys were served on August 26, 2019 and, therefore, Proud Boys should not be dismissed.
8. Private detectives have attempted personal service on Gregory Anglin and Vanguard America and have indicated that they are confident that they have addresses at which they will be able to serve them.
9. Plaintiff's counsel is working diligently to locate and serve the remaining defendants and is working with private detectives, counsel from other cases involving the same defendants, and other research tools to locate the remaining unserved defendants.
10. This is a particularly difficult case to locate the defendants, since many of them have been subject to a significant amount of press coverage since the Unite the Right Rally, and some of the coverage indicates that some of the defendants are in hiding.

11. Plaintiff filed his First Amended Complaint on September 9, 2019. Justice, equity, and fairness favor this Court providing Plaintiff an additional amount of reasonable time to locate and serve the unserved defendants.

12. “The requirements of Rule 4 should be liberally construed when the defendant is not prejudiced.” *Gottfried v. Frankel*, 818 F.2d 485, 493 (6th Cir. 1987). Here, the prejudice of a dismissal would fall on the Plaintiff and there would be no undue prejudice to the defendants by extending the time to effectuate service.

13. Rule 4 provides this Court with discretion to extend the time to effectuate service even without good cause. See *Stewart v. Tenn. Valley Auth.*, 238 F. 3d 424, 2000 WL 1875749 at 1 (6th Cir. Nov. 21, 2000). See also *Wise v. Department of Defense* Doc #7, C-3-97-551 (S.D. Ohio Mar. 19, 1999).

Wherefore and for the reasons set forth above, there is good cause to permit an additional 90 days to serve the remaining unserved defendants. As noted above, good cause is not required and this Court has discretion to extend the time even without a showing of good cause. Plaintiff’s counsel’s declaration is attached and incorporated herein.

s/ Michael L. Fradin
Attorney for Plaintiff

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